

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: THE PETITION OF EASTERN	:
TELEPHONE, INC. REQUESTING	:
VERIZON-RHODE ISLAND TO FILE A	: DOCKET NO. 3333
TARIFF PROVISION ALLOWING FOR	:
THE RESALE OF VOICE MESSAGING	:
SERVICE	:

REPORT AND ORDER

On March 15, 2002, Verizon-Rhode Island ("VZ-RI") moved for a stay of the Rhode Island Public Utilities Commission's ("Commission") Order No. 16938. VZ-RI argued that it will prevail on the merits because state law does not authorize the Commission to offer any services to its competitors at a discount. Also, VZ-RI stated that the FCC does not view the voice messaging service as a telecommunications service under the Telecommunications Act of 1996 ("Act"). Furthermore, VZ-RI stated that the Commission did not conduct any proceeding to determine what is an appropriate discount for a reseller under state law. Finally, VZ-RI argued it would suffer irreparable harm if no stay is granted because it will lose revenues and suffer an irretrievable loss of goodwill with its customers.

On March 20, 2002, Eastern Telephone, Inc. ("Eastern") objected to VZ-RI's request for a stay. Eastern pointed out that VZ-RI merely reiterated its prior argument which had already been rejected. Eastern noted that it is foreclosed from 20 percent of its potential resale customers if it cannot provide resale, and that its ability to do so is impaired if a voice messaging service from VZ-RI is not available for

resale. In addition, Eastern argued that making the voice messaging service available for resale fosters greater competition for residential services.

At an open meeting on April 4, 2002, the Commission reviewed the pleadings. The Commission noted that VZ-RI failed to show it will prevail on the merits of its appeal regarding Order No. 16938. Essentially, VZ-RI repeated the arguments it made in this docket. In addition, subsequent to the open meeting of December 13, 2001, the Vermont Supreme Court upheld the decision of the Vermont Public Service Board (“PSB”) requiring the voice message service to be made available for resale under Vermont state law.¹ The Vermont Supreme Court held that whether voice mail is a telecommunications service is a matter of state law best left to the expertise of the PSB.² Also, the Vermont Supreme Court stated that the federal Act is only a reference point for the PSB. Furthermore, the Vermont Supreme Court indicated that state law is not inconsistent with the federal Act, which does not regulate voice mail.³

This Commission can and has used its state law authority under Title 39 to impose wholesale obligations upon VZ-RI that has not been required by the FCC.⁴ This is comparable to the interplay between a state constitution and the Bill of Rights of the U.S. Constitution. In the area of the rights of criminal defendants, the Rhode Island Supreme

¹ Petition of Verizon New England 2002 Vt. LEXIS 12, p. 7 (2/20/02).

² Id.

³ Id.

Court has interpreted this State's constitution as affording greater protection to criminal defendants than the U.S. Constitution.⁵ Lastly, the Commission utilized the federal resale discount for the voice messaging service because no evidence or argument was made by any party that a separate and different resale discount should be established under state law.

The Commission determines that there would not be irreparable harm to VZ-RI because any loss of revenues would be de minimus in nature. In addition, any customers lost by VZ-RI to Eastern would likely return to VZ-RI if VZ-RI's appeal is successful. On the other hand, if the Commission's order is stayed, Eastern will be harmed if it cannot resell VZ-RI's voicemail because it will be prevented from acquiring new customers. Also, if a stay is granted, the public interest will be harmed because there will be less potential competition for the residential market.

Accordingly, it is

(17040) ORDERED:

1. Verizon-Rhode Island's motion to stay Order No. 16938 is hereby denied.

⁴ See e.g. Order Nos. 16012, 16808 and 16183.

⁵ See e.g. Pimental v. Dept. of Transportation 561 A.2d 1348 (R.I. 1989); State v. Benoit 417 A.2d. 895 (R.I. 1980); Advisory Opinion to the State of Rhode Island 108 R.I. 628 (R.I. 1971).

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN
OPEN MEETING DECISION ON APRIL 4, 2002. WRITTEN ORDER
ISSUED JUNE 21, 2002.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner*

*Commissioner Gaynor did not participate in this decision.